

Cluster I: Preamble, draft articles 1,2,3 and 18

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Mr. Chair.

On this cluster, in line with our previous positions, I would like to highlight the importance of the preamble of the draft articles in outlining the overall purposes of the document; it has been within the interpretative practice of the International Court of Justice to examine preambles, amongst others, to determine the object of a framework. The preamble of the draft articles should properly reflect and provide the context of the discussion and rationale for elaboration of the instrument so as to shed more light on its provisions and to the extent possible elucidate the purposes. That being said we would like to briefly discuss the preamble in tandem with draft articles 2 and 3 on purpose and scope of the instrument.

As opined in the commentary, the scope *ratione materiae* of the draft articles is the rights and obligations of affected States (emphasis added) (TJET/00.0000092 0 612 72 reW*nBT/F1 13 Tf

Nevertheless, draft article 2 does not commensurate

as the scope *ratione materiae*.

In other words, the scope *ratione personae* and *ratione temporis* is reflected in the draft articles; also, the Commission does not consider its *ratione loci* to be limited, thus all these three elements expressed by the Commission in contemplating the scope have been in one way or another accommodated, nevertheless, the scope *ratione materiae* which in the view of the commentary is centered on affected States is absent in draft article 2. The

scope needs to be clear and unambiguous in respect of what the document addresses, the Commission has recognized this important matter in the commentary yet has not converted it into a proper language in draft article 2.

Similarly, given this very subject matter of the draft articles as expounded above, the centrality of the role of affected States and national ownership should be reiterated in the preamble as well as the scope. This is in line with the Guiding Principles stipulated in the General Assembly resolution 48/162 as well as other relevant General Assembly resolutions in this area including resolution 78/120. The role of affected states has also been highlighted in other relevant instruments and documents. For the purpose of discussions under this cluster, the following paragraph could be considered:

exclusive role and national ownership of affected States in initiation, organization, coordination, authorization and implementation of humanitarian assistance and all other relevant activities within their territory and in the facilitation of the work of humanitarian organizations in mitigating the consequences of natural disasters.

Mr. Chair.

As delineated in the yearbook 2006, the Commission was of the view that this topic to be located within the contemporary reflection on an emerging principle entailing responsibility to protect .

The International Framework of Action for the International Decade for Natural Disaster Reduction has enumerated among its purpose the improvement of the response to disasters expeditiously and effectively

Establishing an arbitrary nexus between nationals of a State residing within the territory of that State with a foreign State providing assistance simply ignores the principle of national ownership and sovereignty and the fact that affected States are central to this discussion.

Mr. Chair.

Along with the same discussion on the preamble, we believe that more could have been inferred from the preamble on the object of the draft articles should it have been more elaborative on the very essential component in responding to disasters which is promotion of international cooperation and addressing challenges that affected states, in particular developing countries, face in responding to disasters thereby in protecting their people in the event of calamitous events. Eventually, either in the form of affected States or assisting states, developing States face various challenges owing to limited capacities and resources. International cooperation among States in this area should take into account these differing capacities and resources.

The Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States as an important relevant instrument certain content of which

position of vulnerability in the face of disasters. This has been reflected in various manners in relevant instruments including the Addis Ababa Action Agenda of the Third International Conference on Financing for Development and other instruments which have all been considered by the Commission as frameworks from which in its view certain practices may be adduced. In the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, which is not a universal instrument yet referred to by the Commission in the commentary, regard has been made to developing countries both in its preamble and its provisions.

In the light of the foregoing, we believe that the draft articles should manifest a particular attention to the differences in capacities and resources of States. The Commission could take into account its previous work on Draft Articles on the Law of Transboundary Aquifers wherein the special needs of developing countries were addressed and to that end include appropriate provisions in the preamble as well as other relevant segments of the present draft articles. The concept

known as CBDR seems to be congruent to this discussion, this concept has been appreciated by the Commission in its works and relates to international environmental law yet

organization provides its assistance, it could be regulated on the basis of appropriate arrangements on the part of the affected state with that organization including domestic laws. This view has been envisaged in the commentary, though in a tacit manner, which has considered activities of non-governmental organizations and other private actors, as being subject to the domestic laws. This matter or at least the broad approach taken in this respect needs to be reassessed especially in the light of article 7 which places obligations on affected States to cooperate with these organizations. We will address this topic in its relevant cluster.

I thank you.